

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES DAVIS,

-v-

Plaintiff,

9:17-CV-842
(DNH/DJS)

ANNETTE M. BOYD, Registered Nurse; Auburn Correctional Facility; ANTHONY D. VOLPE, Correctional Officer/Sergeant, Auburn Correctional Facility; ANTHONY T. TURO, Correction Officer, Auburn Correctional Facility; CASEY R. GALBALLY, Correctional Officer, Auburn Correctional Facility; JASON A. EICH, Correction Officer, Auburn Correctional Facility; JOSEP L. VASILE, Correction Officer, Auburn Correctional Facility; KEITH E. VINCENT, Correction Officer, Auburn Correctional Facility; JHON BOYNTON, first name unknown, Correction Officer, Auburn Correctional Facility; JHON DUMONT, first name unknown, Correctional Officer, Auburn Correctional Facility; and JHON PLUMMER, first name unknown, Correction Officer, Auburn Correctional Facility,

Defendants.

APPEARANCES:

James Davis
Plaintiff pro se
04-A-2072
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953

HON. LETITIA JAMES
Attorney General for the State of New York

TIMOTHY P. MULVEY, ESQ.
Ass't Attorney General

Attorney for Defendants
615 Erie Boulevard West
Suite 102
Syracuse, NY 13204

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff James Davis brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 3, 2019, the Honorable Daniel J. Stewart, United States Magistrate Judge, advised by Report-Recommendation that defendant Boyd's motion for summary judgment be denied. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

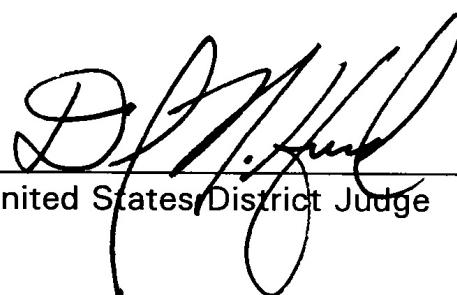
Therefore, it is

ORDERED that

1. Defendant Annette M. Boyd's motion for summary judgment is DENIED;
2. The following claims remain for trial: (1) an Eighth Amendment failure to protect claim against defendant Volpe; (2) an Eighth Amendment excessive force claim against defendants Volpe, Turo, Galbally, Eich, Vasile, Boynton, Dumont, Vincent, and Plummer; and (3) an Eighth Amendment deliberate indifference claim against defendant Boyd;
3. Trial in this matter is scheduled for October 8, 2019, in Utica, New York with pre-trial submissions due at noon on or before September 24, 2019; and

4. Plaintiff's previous request for the appointment of pro bono trial counsel is considered renewed and is GRANTED and that assignment will be made.

IT IS SO ORDERED.



United States District Judge

Dated: February 13, 2019
Utica, New York.